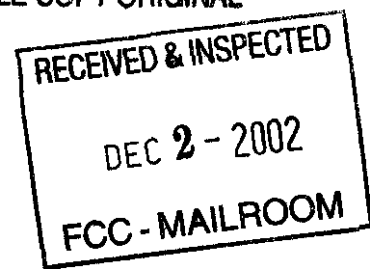


November 19, 2002

To: Secretary
Federal Communications Commission
445 12 Street SW
Washington, D.C. 20554



From: Greg Davis
Des Moines Public Schools
2124 Grand Ave
Des Moines, IA 50312

Re: Application for review related to CC Docket No. 02-6 and DA -2-2531

This letter is an "Application for Review of action taken pursuant to delegated authority." It relates specifically to DA 02-2531, released on October 7, 2002.

According to the memo that notified the Des Moines Schools of this decision, the Des Moines Schools has 60 days (until December 6, 2002) to submit this application.

The factors warranting Commission consideration are:

- 1) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.
- 2) The action involves application of a precedent or policy which should be overturned or revised.
- 3) An erroneous finding as to an important or material question of fact.

The form of relief sought is to waive the minimum processing requirements for only the Priority One funding requests contained in the Des Moines Schools 471 # 267486, and to process this portion of the application as if it was received in the year 3 application window. If this relief is not forthcoming, the alternative form of relief is to allow representatives of the Des Moines Schools to speak with the decision makers in this matter in order to more fully present the Des Moines case.

The questions for this application all relate to items in DA 02-2531. The questions presented for review are:

- 1) In item 9 the "general rule" was referenced, but the rule in question was not specifically stated. We are assuming the rule in question here is that applications not meeting minimum processing standards "may be delayed or your application may **be** returned to you without action." If this *is* indeed the rule, it is obvious that there is flexibility within the general rule to grant the waiver request. In fact, this request from the Des Moines Schools doesn't even rise to the level of requesting a deviation of the rule. The rule says "may", not "will". Obviously, at some point the SLD and the FCC have decided to adopt a zero tolerance position regarding minimum processing standards, which are not reflected in the rules. It is the SLD and the FCC precedence that deviates from the general rule. The **Des** Moines Schools believes that zero tolerance on this matter does not serve the public interest, and asks for recognition that the rule does clearly allow for exceptions to be made. It seems reasonable to grant an exception in this case, given that \$300,000 in priority one funding owed by the E-Rate program to the Des Moines Schools is at stake.

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- 2) Related to item 10 and 11, the point of the Des Moines Schools is that Des Moines did work with the correct forms, and that it was through a minor and unfortunate clerical error that some incorrect pages were included in the application submitted on January 19th. The Des Moines Schools have provided conclusive evidence that all proper 471 pages were completed within the window time frame, and so our body of work should be considered complete within the application window.
- 3) Item 12 reflects a poor understanding of the 471 review process. The SLD exists to review and process thousands of applications. The burden associated with this has very little to do with minimum processing standards. The burden is associated with verifying all the facts associated with the requests. It is important to have basic rules to help streamline the review process, but it is important for any process to recognize that mistakes can be made. The zero tolerance stance on minimum processing standards clearly does not meet the needs of the SLD's primary customers, the schools. Even with the minor clerical mistake in our application, the Des Moines Schools feels our application is of high quality and would require less than the normal SLD burden for an application of this size and complexity. The correct pages were to the SLD months before the actual in-depth review processing of the 471 would have began. Allowing the Des Moines application to be processed does not give any competitive advantage to the Des Moines Schools, and merely allows the SLD to serve its customer.
- 4) It is clear in item 13 an erroneous conclusion was made. The rules state the FCC may allow the Des Moines application to be processed. So the issue is not about a deviation from the actual rule. The issue is what best serves the public interest. The E-Rate program serves the public by serving school districts, and the FCC conclusion does not provide for this for the Des Moines Schools. While the public may be critical of the clerical error made by the Des Moines Schools, it would not expect the Des Moines Schools to be denied application to the E-Rate funding it is eligible for. In this case the statute expects the FCC to serve the public's interest, and the FCC has provided no sound reasoning how a zero tolerance stance on minimum processing standards does this. The fact is that this zero tolerance barrier is changing the 5 minutes of additional SLD burden that would have been needed into weeks of appeal processing to deny the public school access to \$300,000 in funding. The public's interest is not served by this result.
- 5) In conclusion:
 - a. A zero tolerance stance unnecessarily limits the statute, that provides significant more flexibility in the effort of serving public interest, and
 - b. while the FCC clearly can show precedence of taking a zero tolerance stance on minimum processing standards, the Des Moines Schools has made a compelling case for how this does not serve the public interest and is not dictated by the rules, and thus the precedent needs to be revised, and
 - c. on further examination it is fair to characterize the Des Moines application as originally compiled with the correct 471 forms meeting minimum processing standards required by the SLD, even though the initial mailing included several incorrect pages mixed in from a previous draft copy.
 - d. Attached to this letter you will find a letter of support the **US** Congressman representing the Des Moines Schools, indicating that the public interest is best served by granting the request to allow the Des Moines application to be processed.

LEONARD L. BOSWELL
3rd DISTRICT, IOWA

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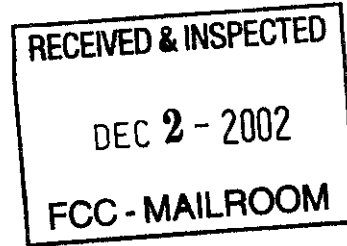
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Congress of the United States
House of Representatives
Washington, DC 20515-1503

November 22, 2002

Mr. K. Dane Snowden
Chief
Consumer & Government Affairs Bureau
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554



Dear Mr. Snowden:

It has come to my attention that the Des Moines Public School District, located in Des Moines, Iowa, is having difficulty with the application process for receiving E-Rate funding for funding year 2001.

It is my understanding that the Des Moines Schools committed an unfortunate but minor clerical error that resulted in its 471 application not meeting the Services and Library Division (SLD) minimum processing standards. Three pages from a draft version of the application, on the year 2000 form, were mistakenly mixed in with 700 pages of the correct year 2001 form. Because the mixed pages from the two forms were nearly identical, it is easy to see how this error could occur. By the time the Des Moines Schools was notified of the mistake, the application deadline had expired. Even though the district had correct pages to the SLD overnight and months before the actual processing of the application, the SLD seems intent on establishing a zero tolerance position when it comes to their minimum processing standards.

It is my understanding the SLD claims their decision is based on efficiency. However, according to the Des Moines Schools, what would have been a simple five minute remedy for the SLD turned into hours and days of time devoted to considering the district's appeal requests. It does not appear that a zero tolerance enforcement of minimum processing standards allows the SLD to properly serve its primary customer, the public schools. It is my further understanding that the Commission has the ability under the rules to "waive any provision of the SLD rules if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the rule."

Please advise as to whether the Commission does in fact have the authority to exercise its authority and allow the Des Moines Schools application to be processed as requested. If so, I lend my support to the position of the Des Moines Schools that a simple clerical error should not cause the district to lose more than \$300,000 in E-Rate funding for which it is eligible. Please also advise as to whether the Des Moines Schools have any other potential remedies to correct this unfortunate situation. The individuals who will suffer as a result of this decision are the children who attend the Des Moines Schools. I am confident that the Des Moines Schools have taken quality control steps to ensure that all future applications meet minimum processing standards.

At this point, I am requesting a formal written response from your office addressing these concerns to be sent to my district office in Osceola, Iowa. Please feel free to contact me or my staff if you have any additional questions.

Sincerely,

Leonard L. Boswell
Member of Congress

LLB:jb

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